IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

THURSDAY, THE 22ND NOVEMBER 2007 / 1ST AGRAHAYANA 1929

OP.No. 9506 of 2000(F)

PETITIONER:

B.ANIL KUMAR,
M/S.ANIL AGENCIES,
CHIRAYINKEEZHU ROAD,
ATTINGAL.

BY ADV. SRI.A.M.SHAFFIQUE

RESPONDENTS:

1. DEPUTY COMMISSIONER OF INOCME TAX CICRLC-I,
AYAKKARL BHAVAN, KAWDIAR,
THIRUVANANTHAPURAM.

2. ADDITIONAL COMMISSIONER OF INCOME TAX,'
-DO- -DO-

BY ADV. SRI.P.K.R.MENON,SR.COUNSEL,GOI(TAXES)
SRI GEORGE K. GEORGE

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 22/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP.NO.15906/2000 IN OP.NO.9506/2000

DISMISSED

22/11/2007 Sd/- P.R.RAMAN, JUDGE.

APPENDIX

PETITIONER'S EXTS:

EXT.P1 TRUE COPY OF THE APPLICATION FILED BY THE PETITIONER BEFORE THE ADDL. COMMISSIONER OF INCOME TAX DTD.6/12/1999.

EXT.P2 TRUE COPY OF THE NOTICE ISSUED BY THE 2ND RESPONDENT TO THE PETITIONER DTD. 6/3/2000.

EXT.P3 TRUE COPY OF THE REPLY SENT BY THE PETITIONER TO THE 2ND RESPONDENT DTD. 6/3/2000.

EXT.P4 TRUE COPY OF THE LETTER FROM THE 2ND RESPONDENT TO THE PETITIONER DTD. 15/3/2000.

EXT.P5 TRUE COPY OF THE PETITIONER'S REQUEST TO THE IST RESPONDENT DTD. 24/3/2000.

P.R.RAMAN, J.

O.P.No.9506 OF 2000

Dated this the 22nd day of November, 2007

JUDGMENT

Petitioner is an assessee under the Income Tax Act. The point that is raised in this original petition is regarding the inclusion of the entire amount of Rs.6,41,500/- said to have been received by the assessee from the K.S.R.T.C. during the year 1996-97, which is the previous year relevant for the assessment year 1997-98. According to the assessee, the amount so received is the toll charges which ought to have been paid by the K.S.R.T.C. in 1994-95 itself. The 2nd respondent having directed the lst respondent to estimate the income at 10% of the gross collection for the year 1995-96 itself, the same principle could have been extended for the assessment year in question also and thus included only 10% of the said amount rather than taking the entire amount as the taxable amount. Since the assessee approached this Court at the time when the assessments were not even completed, this Court while admitting the original petition permitted the respondents to complete the assessment for the year 1997-98; but stayed the recovery of the amount pursuant to the said assessment and ordered that

such assessment will be subject to further orders from this Court. Parties are on agreement that the assessment has since been completed during the pendency of the original petition and an appeal has been preferred by the assessee before the Appellate Authority.

2. In such circumstances, the petitioner is given an opportunity to pursue his statutory remedies in accordance with law. The stay already ordered by this court will continue for a period of two months so as to enable the petitioner to work out his remedies against such recovery before the appropriate authorities in accordance with law.

Original Petition is closed without prejudice to the contentions raised by either of the parties.

P.R.RAMAN,
Judge.

kcv.